**MOHAMED RAZIP FADZILLAH**

**v.**

**PUBLIC PROSECUTOR & OTHER CASES**

COURT OF CRIMINAL APPEAL, SINGAPORE
WEE CHONG JINCJ
LP THEAN J
P COOMARASWAMY J
[CRIMINAL APPEAL NOS. 3, 4 & 5 OF 1986]
1 OCTOBER 1987

***CRIMINAL LAW AND PROCEDURE:*** *Bail - Offence of rape - Non-bailable offence - Schedule A to CPC - Preliminary inquiry into charges of rape - Committed for trial in the High Court - Bail application pending trial in High Court - Bail refused - Whether order of refusal appealable - Law in Singapore - No general right of appeal in criminal cases - Bail application - Whether any provision for appeal against order of High Court refusing bail - Whether appealable under "any other law in force."*

***CRIMINAL lAW AND PROCEDURE:*** *Appeal - Jurisdiction of Court of Criminal Appeal - Order of High Court rejecting bail application - Whether order amounted to a "judgment" - Section 44 Supreme Court of Judicature Act.*

***CRIMINAL LAW AND PROCEDURE:*** *Order of Bail application - Question of being altered and reviewed - Material change of circumstances or new facts - Whether Court of Criminal Appeal can entertain to hear application - Order is interlocutory and tentative in nature - Question of order of finality.*

This was an appeal by the three appellants against the decision of the learned Judge (Sinnathuray J) who refused their application to grant bail pending their trial on a charge of rape in the High Court. The accused persons were committed for trial in the High Court at the conclusion of the preliminary inquiry into the charges in the Subordinate Court. The applications were made pursuant to what is now s. 354 of the *Criminal Procedure Code* (1985 Revised Edn.).

**Held:**

**[1]** In Singapore, there is no general right of appeal in criminal cases except such as is provided by law which is made clear by s. 241 of the Criminal Procedure Code. The Criminal Procedure Code contains no provision for an appeal against an order of the High Court made under s. 354 of the Criminal Procedure Code. The appellants can only appeal under "any other law for the time being in force".

**[2]** An order made on a bail application, being interlocutory and tentative in nature does not fall within the purview of s. 44 of the Supreme Court of judicature Act. It is also not a "Judgment" under s. 217(1) of the Criminal Procedure Code, which is the equivalent of s. 369 of the Indian Criminal Procedure Code.

**[3]** However, the Court of Criminal Appeal can entertain bail applications pending appeal from persons convicted by the High Court in the exercise of its original criminal jurisdiction as allowed under s. 57(1) of the Supreme Court of Judicature Act.

**[4]** The prohibition against alteration or review does not apply to the High Court in any event. Accordingly, successive applications for bail can be made to the High Court. But once an application for bail has been rejected the Court would be extremely reluctant in granting bail on subsequent application unless there has been a material change of circumstances or new facts have since come to light.

**Cases referred to:**
*Re Balasundara Pavalar [1951] AIR Madras 7*
*Suryarao v. Sathiraju [1948] MWN Cr 65; [1948] AIR 35 Mad 510; 49 Cr LJ 754*
*Gng Eng Hwoo v. Regina [1954] 20 MLJ 256*

**Legislation referred to:**
Criminal Procedure Code (1985 Revised Edn.) [Sing], ss. 217(1), 241, 247, 354
Criminal Procedure Code [Ind], s. 369
Supreme Court of Judicature Act [Sing], ss. 42, 44, (1), (2), (3), 46, 49, 51(1), 54, 58, 59, 60

**JUDGMENT**

**Wee Chong Jin CJ, LP Thean J, P Coomaraswamy J:**

*Factual Background*

The three accused in these criminal appeals were charged with the offence of rape under **s. 376** of the **Penal Code**. Rape is a non-bailable offence, as provided in **Schedule A** to the **Criminal Procedure Code.** The preliminary inquiry into the charges was held in the Subordinate Courts on 19 December 1985, at the conclusion of which the accused were committed for trial in the High Court.

Counsel for each of the accused then applied, by way of criminal motions, to the High Court for the accused to be admitted to bail pending their trial. These applications were made pursuant to what is now **s. 354** of the **Criminal Procedure Code (1985 Revised Edition).** (All references to statutory provisions hereinafter shall be to the 1985 Revised Edition of the Statutes). The applications came before Sinnathuray J who refused to grant bail but directed an early trial instead.

The three accused appealed against the decision of the learned Judge. We dismissed all the appeals. We now give our reasons.

**Is an order on a bail application appealable?**

**Section 354 CPC is as follows:**

> 354(1) The High Court may, in any case whether there is an appeal on conviction or not, direct that any person shall be admitted to bail or that the bail required by a police officer or Magistrate's Court or District Court shall be reduced or increased.
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> (2) The High Court may at any stage of any proceeding under this Code cause any person who has been released under this section to be arrested and may commit him to custody.

In Singapore, there is no general right of appeal in criminal cases except such as is provided by law. This is made clear by **s. 241 CPC** which provides:

> 241 No appeal shall lie from a judgment, sentence or order of a criminal court except as provided for by this Code or by any other law for the time being in force.

The **CPC** contains no provision for an appeal against an order of the High Court made under **s. 354 CPC.** The Appellants can only appeal under "any other law for the time being in force".

We now turn to the **Supreme Court of Judicature Act. Section 44 SCJA** which spells out the jurisdiction of the Court of criminal appeal to entertain appeals from the High Court, reads:

**44-(1)** The Court of criminal appeal shall have jurisdiction to hear and determine any appeal against **any decision made by the High Court in the exercise of its original criminal jurisdiction,** subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.

(2) An appeal by a person convicted shall be either against the conviction or against the sentence or against both:

Provided that where an accused person has pleaded guilty and been convicted on such plea there shall be no appeal except as to the extent or legality of the sentence.

(3) An appeal by the Public Prosecutor shall be either against the acquittal of an accused person or against the sentence imposed upon an accused person by the High Court.

(4) An appeal may lie on a question of fact or a question of law or a question of mixed fact and law.

(5) The Court of criminal appeal shall also have jurisdiction to hear and determine matters brought before it in accordance with s. 59 or 60.

**Sections 59** and **60 SCJA** have no relevance to the proceedings before us. The key words in **s. 44(1)** are "any decision made by the High Court in the exercise of its original criminal jurisdiction".

**Section 44,** before it was repealed and substituted in its present form by the **Supreme Court of judicature (Amendment) Act 1973,** was in the following terms:

**44-(1)** The Court of criminal appeal shall have jurisdiction to hear and determine any appeal by a person convicted by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this or any other written law regulating the terms and conditions upon which such appeals may be brought.

(2) An appeal by a person convicted shall be either against the conviction or against the sentence or against both:

Provided that where an accused person has pleaded guilty and been convicted on such plea there shall be no appeal except as to the extent or legality of the sentence.

(3) An appeal may lie on a question of fact or a question of law or on a question of mixed fact and law.

(4) The Court shall also have jurisdiction to hear and determine matters brought before it in accordance with the provisions of ss. 58, 59 or 60 of this Act.

The Amendment Act of 1973 also made certain changes to **ss. 42, 46, 49, 54 and 58 SCJA.** For example, **s. 42** was altered so that "appellant" includes the Public Prosecutor.

It is plain from the legislative history of all these sections that the words "any decision made by the High Court" in **s. 44(1) SCJA** were inserted to accommodate appeals by the Public Prosecutor, thereby enlarging the jurisdiction of the Court of criminal appeal in that respect. The words were, in our opinion, not inserted as a "catch-all" phrase. They must be read in the context of the other provisions. In **s. 44(2)** the appellant is the "person convicted" and the appeal is against conviction, or sentence, or both. In **s. 44(3),** the appellant is the Public Prosecutor and the appeal is against acquittal, or sentence. Even when questions of law are referred to the Court of criminal appeal under **ss. 59** or **60 SCJA,** they are done only at the conclusion of the trial or the appeal, as the case may be. The only logical conclusion, therefore, is that the jurisdiction of the Court of criminal appeal is to hear appeals against **orders of finality,** i.e., those resulting conviction and sentence, or acquittal.

What then is the nature of an order made on an application for bail? It is helpful to refer to *Re Balasundara Pavalar* [1951] AIR Madras 7. There are the question before the Madras High Court was whether a convicted person, whose application for bail pending his appeal had once been rejected, could renew that application for the same relief. The Court decided that there was no prohibition against entertaining such an application. Govinda Menon J, who delivered the judgment of the Court, said (at p. 9 of the report):

> It has to be remarked that an order on a bail application does not finally determine the guilt or innocence of a person accused or convicted of an offence. All that such an order postulates is that pending an enquiry or trial, and in the case of a convicted person, pending an appeal by him, it is not absolutely necessary that his liberty should be curtailed.
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> ...
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> It seems to us, therefore, that an order on a bail application is nothing more than an interlocutory and tentative expression of the conclusion as to whether a person should be set at large pending trial or disposal of his appeal, and nothing more.

The Court then went on to consider (at p. 10 of the report) whether an order rejecting the bail application amounted to a "judgment" under **s. 369** of the **Indian Criminal Procedure Code,** which prohibits judgments from being altered or reviewed once they have signed:

> Such a reconsideration will be prohibited only if the order already rejecting the bail application amounts to a judgment under the Criminal Procedure Code. It need hardly be stated that the Criminal Procedure Code does not define the word "judgment" as is done in the Code of Civil Procedure. One of us had occasion to refer to it recently in the case reported in *Suryarao v. Sathiraju* [1948] MWN Cr 65; [1948] AIR 35 Mad 510; 49 Cr LJ 754). Reference was made there to the definition of "judgment" in *Halsbury's Laws of England*, Hailsham Edn., Vol. IX, para. 260 to 264 as meaning a final order in a trial terminating in the conviction or acquittal of the accused. That this is the meaning of the word "judgment" even under the Criminal Procedure Code is evident from the decisions quoted therein.
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> If by the word "judgment" is understood a final order in a trial terminating in the conviction or acquittal of the accused, it necessarily follows that a tentative order directing the release of an accused person pending the hearing of his appeal by an appellate Court cannot be termed a "judgment" under the Code. Therefore, **s. 369,** Criminal Procedure Code, can have no application to a bail application.

We agree with the observations quoted above. It therefore follows that an order made on a bail application, being interlocutory and tentative in nature, does not fall within the purview of **s. 44** of the **SCJA** and is thus a non-appealable order.

It is also not a "judgment" under **s. 217(I) CPC,** which is our equivalent of **s. 369** of the **Indian CPC**. **Section 217 (1) CPC** reads:

> 217(1) No court other than the High Court, when it has recorded its judgment, shall alter or review the judgment.

The prohibition against alteration or review does not apply to the High Court in any event. Accordingly, successive applications for bail can be made in the High Court. But once an application for bail has been rejected, the Court would be extremely reluctant in granting bail on subsequent applications, unless there has been a material change of circumstances or new facts have since come to light.

We would add that what we have said applies equally to the subordinate Courts. We are of the view that an order made on a bail application by a subordinate Court does not come within the meaning of words "any judgment, sentence or order pronounced by any District Court or Magistrate's Court in a criminal case or matter' contained in **s. 247 CPC**. It is certainly

not a judgment or sentence, and neither is it an "order". In *Gng Eng Hwoo v. Regina* [1954] 20 MLJ 256, Whitton J had this to say about the word "order" appearing in a subsection similar in terms to the present **s. 241 CPC:**

> I have been unable to find any definition of the word "order" which appears to fit its use in this section, but my research into the matter has led me to the conclusion that in connection with a criminal cause or matter the word is confined, broadly speaking, to those **final** decisions of a Court which affect parties to the proceedings in respect of their person or property.

We have already said that an order made on a bail application is interlocutory and tentative in nature.

That was apparently why the Public Prosecutor's appeal in *Public Prosecutor v. K. Suppiah & 14 Ors.* (Magistrate's Appeal No. 19 of 1967 - unreported) was dismissed. There, the accused were charged in a Magistrate's Court with non-bailable offences on 2 February 1967. The Magistrate rejected the accused's application for bail, and ordered that they be remanded until 11 February 1967. On 8 February 1967, the accused again appeared before the Magistrate to renew their application for bail. It was common ground that the basis for opposing bail no longer existed. However, the Prosecution raised a preliminary objection that the Magistrate had no jurisdiction to entertain the fresh application for bail on the grounds that the Magistrate, having made the remand order effective till 11 February 1967, was *functus officio* until that date, and that the matter was *res judicata*. The defence Counsel urged the Magistrate to act accordance with the prevailing practice that an application for bail could be renewed again and again. The Magistrate ruled that he had the jurisdiction to hear the fresh application, for bail and granted bail. Against that decision the prosecution appealed to the High Court, which, in our opinion, rightly dismissed it.

Likewise, therefore, successive applications for bail can be made in the subordinate Courts, subject to the same principle that we have stated. This accords both with the law as well as time-honoured practice.

There is one final point. The Court of criminal appeal can entertain bail applications pending appeal from persons convicted by the High Court in the exercise of its original criminal jurisdiction. This is allowed under **s. 51 (SCJA)** which provides:

> **51-(1)** Except in the cases mentioned in subsection (3), no appeal shall operate as a stay of execution, but the trial Court or the Court of Criminal Appeal may stay execution on any judgment, order, conviction or sentence pending appeal on such terms as to security for the payment of any money or the performance or non-performance of any act or the suffering or any punishment ordered by or in such judgment, order, conviction or sentence as to the court may seem reasonable.

When an accused has been tried and convicted by the High Court and wishes to apply for bail pending appeal, he should in the first instance apply to the trial Court. If the trial Court refuses bail, he may apply to the Court of criminal appeal. He may of course choose to make a second application to the trial Court instead of applying to the Court of criminal appeal. We again emphasise here the principle to be applied in hearing a second or any subsequent application, namely that there should be a material change of circumstances or that new facts have since come to light, before such an application will be granted. The applicant and his Counsel should bear this in mind before contemplating such an application.

Also found at [1987] 2 CLJ 478